

REMARKS

Claims 1-20 are pending in the present application with claims 1, 13, 18, 19 and 20 being independent. Claims 1, 2 and 4 have been amended. Reconsideration in view of the following remarks is kindly requested.

ALLOWABLE SUBJECT MATTER

Applicants note that the Examiner has not rejected claims 19 and 20. Applicants shall presume that claims 19 and 20 are allowable unless the Examiner indicates otherwise.

CLAIM REJECTIONS UNDER 35 USC § 112

Claims 1-17 stand rejected as allegedly being indefinite for failing to particularly point out and distinctly claim subject matter which applicants regard as the invention. Applicants respectfully disagree and traverse these rejections.

Initially the Applicants respectfully submit that the issue of indefiniteness raised by the Examiner relates only to claims 1-12. Claims 13-17 do not contain, or relate back to a claim that contains, the word "adequate." Thus, because there is no rejection raised against claims 13-17, these claims should be indicated as allowable.

In order to overcome the rejections under 35 USC § 112, paragraph 0008 of the specification and claims 1, 2 and 4 have been amended. Accordingly, withdrawal of the rejections of claims 1-17 is kindly requested.

CLAIM REJECTION UNDER 35 USC § 103

Claim 18 stands rejected as allegedly being unpatentable over Al-Salameh et al. (US Patent No. 6,317,213, hereinafter “Al-Salameh”). Applicants respectfully disagree and traverse this rejection.

Applicants submit that Al-Salameh fails to teach or suggest a wavelength exerciser for an agile network that comprises at least a path selector for selecting a test path between a source node and a destination node, and a test connection controller for controlling operation of the path selector, a wavelength assignment module and a fault finder, in combination with other features of claim 18.

In more detail, Al-Salameh fails to disclose a path selector for selecting a test path as recited in claim 18. Instead, Al-Salameh at best it appears discloses conveying a message between an Optical Analyzer (OA) 284 and a Network Control Element (NCE) 240 directly over an optical layer of a network. While Al-Salameh appears to disclose other means for message transmission, such as PSTN lines, coaxial cable, wireless communications it fails to disclose a path selector or a selection process. Applicants note that the OA 284 does not appear to be capable of reporting a fault to the NCE. Said another way, Al-Salameh’s message path cannot be equated to the test path as recited in claim 18.

Next, Applicants note the Examiner’s admission in the Office Action that Al-Salameh does not disclose a wavelength assignment module. Applicants

also note that the Examiner thereafter rejects claim 18 without citing a prior art reference that teaches such a feature, which is required to form a *prima facie* case of obviousness. Instead, the Examiner appears to be relying on personal knowledge which is impermissible (see MPEP § 2143.03 and *In re Royka*. 490 F.2d 981, 181 USPQ 580 (CCPA 1974)).

If the Examiner wishes to continue to rely on personal knowledge, Applicants respectfully request that the Examiner submit an affidavit or declaration setting forth specific factual statements and an explanation to support such a finding (see 37 C.F.R. §1.104 (d)(2) and MPEP § 2144.03 (c)).

Finally, Applicants note that Al-Salameh fails to disclose or suggest a test connection controller for controlling a wavelength assignment module as in claim 18.

Accordingly, Applicants respectfully request withdrawal of the pending rejection and allowance of claim 18.

CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1-20 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number of the undersigned below.

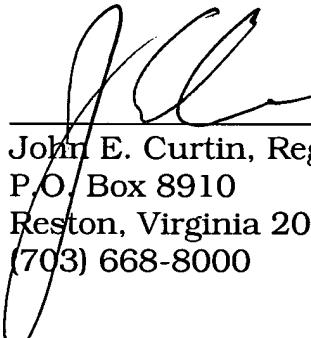
In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 668-8000 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By


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Enclosure: Attachment A

ATTACHMENT A

[0008] According to an aspect of the invention, a method for evaluating connections in an agile network is provided, comprising: (a) for a switching node of the agile network, selecting a plurality of paths available between the switching node and all remaining nodes of the agile network; (b) for an available path, selecting a plurality of adequate (i.e., selected) wavelengths according to a wavelength performance parameter; (c) for each selected adequate wavelength, establishing the test connection along the path; and (d) at preset intervals, repeating step (c) for all selected adequate wavelengths, repeating steps (b) and (c) for all available paths, and repeating steps (a), (b) and (c) for all nodes of the agile network.